IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.Rev.Pet.No. 558 of 1999()

ST.450/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT, RANNI
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REVN. PETITIONER: P.W.1.

KRISHNANKUTTY NAIR,
PATHALIL HOUSE, VADASSERIKKARA.

BY ADV. SRI.ALAN PAPALI
SRI.M.P.PRABHANANDAN
SRI.GEORGE G.POOTHICOTE

RESPONDENTS: ACCUSED & COMPLAINANT
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1. **V.C.MATHEW, S/O. BABY, VAZHAYIL OLIKKAVU, VADASSERIKKARA.**

2. **GEORGE, S/O. ABRAHAM, VALIATHARAYIL OLIKKAVU, VADASSERIKKARA.**

3. **STATE OF KERALA (A.S.I. OF POLICE, RANNI CRIME NO.144/96), REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY ADV. SRI.V.PHILIP MATHEW
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO. 558 OF 1999

DATED THIS THE 25th September 2007

ORDER

The revision petitioner is the de facto complainant in S.T.No.450/1996 with respect to the offence under Sections 341,323 read with Section 34 I.P.C.

2. The prosecution case is that on 3-7-1996 at 3.30 p.m. while PW1 was standing in the courtyard of Thamarappally estate office situated at Vadasserikkara, he was wrongfully restrained by both the accused and the first accused caught hold of PW1 and fisted him on the left cheek and thereafter kicked him on the left hand muscle causing pain and that the second accused fisted him on the chest.

3. The evidence adduced in the matter consisted of the testimony of Pws. 1 to 5 and Exts.P1 to p4. The trial court acquitted the accused pointing out that the version of PW1, the de facto complainant contained a number of discrepancies and that the version of PW2, the occurrence witness is totally at variance with the version of PW1 and further there is a delay of

four days in the F.I.R. reaching the court.

4. The injuries noted in Ext.P3 wound certificate which has been proved by PW4, the Doctor are (1) contusion on the right forearm (ii) abrasion on the lateral aspect of left knee joint and (iii) complaint of pain on the centre of back and both the shoulders. It was brought out that PW1 came to the hospital at 7.30 p.m. on the same day. The F.I.S. was recorded on 4-7-1996 at 5.45 p.m. after receipt of intimation from the hospital. Although the delayed recording of the F.I.S. and registration of the crime can be explained on the ground that the intimation was received belatedly. But as noted by the court below there was no explanation for the delay in producing the F.I.R. before the Magistrate. The F.I.R. has reached the court only on 8-9-1996. The injuries noted in Ext.P3 wound certificate are of minor in nature and does not exactly tally with the prosecution allegations. The allegation of PW1 is that he was fisted on his left cheek by the first accused and the second accused fisted him on the chest. There was corresponding injuries noted in Ext.P3. It is pointed out that the discrepancies in the evidence would have

been occasioned as they were examined in the court after about two years. I find hat so far as the accused is concerned, the same is no explanation to arrive at a finding of guilty. Interference in revision is not permissible if the view taken by the court below is a possible one. I find that the instant case is not a fit one to set aside the findings of the courts below in exercise of the revisional jurisdiction. The Crl. revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.no. 558 of 1999

ORDER

25-9-2007